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9 Richard S.E. Johns, Individually and on Behalf of
All Others Similarly Situated v. Hitachi, Ltd., et al.,*
10 Case No. 3:12-cv-6152 JSC

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11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 IN RE: LITHIUM BATTERIES
16 ANTITRUST LITIGATION

CASE NO. M 13-2420 YGR

MDL NO. 2420

17 This Document Relates to:

**APPLICATION FOR APPOINTMENT
TO PLAINTIFFS' STEERING
COMMITTEE**

18
19 *RICHARD S.E. JOHNS, Individually and on
Behalf of All Others Similarly Situated v.
20 HITACHI, LTD., et al., Case No. 3:12-cv-6152
JSC*

21 The Honorable Yvonne Gonzales Rogers

1 On March 4, 2013, this Court issued an Order Setting Initial Conference. (Dkt. No. 8) By
 2 that order the Court expressed its intention to appoint a Plaintiffs' Steering Committee ("PSC") to
 3 conduct and coordinate the discovery stage of this litigation with the defendants' representatives
 4 or committee. (*Id.* at 5). Appointment to the PSC is subject to the approval of the Court. (*Id.*)
 5 By this Application, counsel for RICHARD S.E. JOHNS will and hereby does, request that
 6 KELLER GROVER LLP ("Keller Grover") be appointed to the Plaintiffs' Steering Committee on
 7 behalf of Indirect Purchaser Plaintiffs ("IPP") as contemplated by item 6(b) in this Court's
 8 March 4, 2013 Order.

9 Keller Grover requests appointment by the Court based on this Application setting forth
 10 its qualifications to serve on the PSC, the Declaration of Jeffrey F. Keller ("Keller Decl.") filed
 11 concurrently, the oral argument of counsel, the complete file and record in this action, and such
 12 additional matters as the Court may consider.

13 **I. KELLER GROVER'S QUALIFICATIONS TO SERVE ON THE PSC**

14 The Court's March 4 Order identified the main criteria for membership in the PSC as:
 15 (a) willingness and availability to commit to a time-consuming project; (b) ability to work
 16 cooperatively with others; and (c) professional experience in this type of litigation. (Dkt. No. 8
 17 at 5) With more than twenty years of combined experience in complex litigation, Keller Grover
 18 exceeds the criteria this Court has identified and is well-suited to serve on the PSC.

19 **A. Willingness and Ability to Commit to a Time-Consuming Project**

20 Keller Grover has a clear record of commitment to time-consuming litigation since it
 21 routinely litigates cases that take five – and sometimes more, years to resolve. Keller Decl. ¶ 6-8
 22 For example, the firm's founding partner, Jeffrey Keller, dedicated more than seven years to
 23 litigating the landmark antitrust class action *In re: Visa Check/MasterMoney Antitrust Litigation*
 24 Case No. CV-96-5238 (EDNY). Mr. Keller played a pivotal role on the trial team in the
 25 unprecedeted \$3.05 billion settlement that also achieved dramatic injunctive relief that has
 26 helped reshape the landscape of the national payments industry. Keller Decl. ¶ 6. Keller Grover
 27 has also demonstrated its commitment to litigating other long-running complex antitrust matters.

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1 Keller Decl. ¶ 7. In each of these matters, Keller Grover has committed significant resources of
 2 time and money. *Id.*

3 Because the indirect purchasers in this case are consumers of lithium ion batteries which
 4 are used in numerous consumer electronics, an indirect purchaser class in this case will likely
 5 involve millions of class members. Given the consumer aspect of this case, Keller Grover's
 6 proven commitment to time-consuming consumer litigation on behalf of millions of class
 7 members should also be weighed here Keller Decl. ¶ 8. For example:

- 8 • *Friedman et al v. 24-Hour Fitness USA, Inc.*, Case No CV-06-062382 (C.D. Cal)
 9 After the case was filed in 2006 Keller Grover certified a nationwide RICO class
 10 and defeated Defendant's summary judgment motion before settling RICO and
 11 EFTA claims on behalf of a nationwide class of approximately 1.5 million
 12 consumers valued at approximately \$295 million. It was the largest reported
 13 settlement in California in 2010. Keller Grover was co-lead counsel in this case.
- 14 • *Moore, et al. v. Verizon Communications, et al.*, Case No. 09-cv-1823 SBA (N.D.
 15 Cal.) Keller Grover has been co-counsel on this multi-million consumer class
 16 action since before it was filed in 2009 – more than five years. The case has been
 17 preliminarily approved for settlement. The theory of liability in this case involved
 18 violations of numerous federal statutes including RICO.
- 19 • *Nwabueze v. AT&T Inc., et al.*, Case No. 09-cv-1529 SI (N.D. Cal) Keller Grover
 20 has also been co-counsel on this multi-million consumer class action since before
 21 it was filed in 2009 – more than five years. The case has also been preliminarily
 22 approved for settlement. The theory of liability in this case involved violations of
 23 numerous federal statutes including RICO.

24 *See also* Keller Decl. ¶ 3, Ex. A describing numerous other cases where the firm has
 25 demonstrated its commitment to its clients and achieved significant results.

26 In each of these cases, the firm allocated the time and resources needed to litigate and saw
 27 the matters through to their ultimate resolution. Keller Grover is similarly prepared and able to
 28 commit to this time-consuming complex litigation.

B. Ability to Work Cooperatively With Others

Keller Grover has worked on numerous class action cases representing millions of employees and consumers. Keller Decl. ¶ 3, Ex. A. In these cases Keller Grover has played virtually every role possible in a complex litigation, including lead counsel, co-lead counsel, liaison counsel, co-counsel and local counsel. Keller Grover is able to play these varying roles because of the firm's proven ability to work in cooperation with other firms. *Id.* Keller Grover has demonstrated its cooperative ability in relatively small cases where there were only a few firms involved as well as in large cases like this one where firms from around the country have participated. *Id.* In addition, Keller Grover has also demonstrated a commitment to adhering to the highest standards of professionalism, courtesy, and civility in working cooperatively with opposing counsel on matters of scheduling and discovery even as the firm advocates zealously for its clients. Keller Decl. ¶ 9.

Further, because this MDL is proceeding in the Northern District of California, Keller Grover's San Francisco offices make it well situated to work cooperatively with other local firms in the district where this case is pending without undue travel and to allow Keller Grover to offer local offices for firms traveling from out of the area. Keller Decl. ¶ 10. This combination of local offices and willingness to extend hospitality helps facilitate scheduling which ultimately streamlines the process and allows the case to move forward in the most cost-efficient manner for all parties and the Court.

Keller Grover more than meets the Court's second criteria for appointment to the Steering Committee.

C. Professional Experience in This Type of Litigation

As described in the firm's resume, the firm specializes in complex class action litigation in matters involving antitrust, consumer protection and plaintiffs'-side employment issues. Keller Decl. ¶ 3, Ex. A. The firm is also active in the area of whistleblower and *qui tam* actions. *Id.* Lawyers in the firm regularly litigate matters throughout California and around the United States.

Keller Grover's two partners (each of whom has more than twenty years' experience) have recovered billions of dollars on behalf of class members. *Id.* The firm's resume enumerates more

1 than 20 consumer and antitrust cases leading to recoveries for clients and class members. *Id.* In
 2 addition, Keller Grover has acted as class counsel in more than 45 employment-related class
 3 actions. *Id.*

4 In the firm's years representing millions of class members in scores of cases, Keller
 5 Grover has developed expertise important in complex class litigation, including conducting
 6 voluminous discovery, coordinating multiple parties for scheduling, researching and drafting
 7 complex substantive briefing, working with experts and in the resolution mechanisms unique to
 8 complex litigation. Keller Decl. ¶ 4. Keller Grover is prepared to offer the full extent of these
 9 professional skills in this litigation. Thus, Keller Grover more than satisfies the Court's third
 10 criteria for appointment to the Steering Committee.

11 **II. CONCLUSION**

12 For all the foregoing reasons, Keller Grover respectfully requests that the Court grant its
 13 application for appointment to the Plaintiffs' Steering Committee on behalf of Indirect Purchasers.

15 Dated: March 28, 2013

16 Respectfully submitted,

17 **KELLER GROVER, LLP**

18 By: /s/*Jeffrey F. Keller*

19 **JEFFREY F. KELLER**

20 *Counsel for Plaintiff RICHARD S.E. JOHNS in*
 21 *Richard S.E. Johns, Individually and on Behalf*
 22 *of All Others Similarly Situated v. Hitachi,*
Ltd., et al., Case No. 3:12-cv-6152 JSC